

THE HONORABLE RONALD B. LEIGHTON  
THE HONORABLE THERESA L. FRICKE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALLSTATE INSURANCE COMPANY,  
ALLSTATE PROPERTY & CASUALTY  
INSURANCE COMPANY, ALLSTATE  
INDEMNITY COMPANY, and ALLSTATE  
FIRE & CASUALTY INSURANCE  
COMPANY,

Plaintiffs,

v.

TACOMA THERAPY, INC., TACOMA  
REHABILITATION THERAPY, INC., P.S.,  
ANDREW JACOBS, MELANIE JACOBS,  
NANDY, INC., NATHAN LEMINGS and  
JANE DOE LEMINGS, husband and wife, and  
the marital property thereof, THE LAW OFFICE  
OF MCLAUGHLIN & ASSOCIATES, INC.,  
WESLEY MCLAUGHLIN and JANE DOE  
MCLAUGHLIN, husband and wife, and the  
marital property thereof, DIRECTION  
SOLUTIONS MARKETING. INC.,  
DOES 1-100, and ROES 101-200.

Defendants.

NO. 3:18-mc-05022 RBL-TLF

PLATINUM COLLISION CENTER LLC  
AND TAUSHA MCKERNAN'S FRCP 72(a)  
OBJECTIONS TO MAGISTRATE FRICKE'S  
APRIL 1, 2019 ORDER ON PLAINTIFFS'  
MOTION TO COMPEL POSTJUDGMENT  
DISCOVERY AND FOR AN ORDER  
AUTHORIZING EXAMINATION OF  
TAUSHA MCKERNAN

**NOTED FOR HEARING: APRIL 26, 2019**  
**ORAL ARGUMENT REQUESTED**

**I. RELIEF REQUESTED**

COMES NOW Platinum Collision Center, LLC and its sole member, Tausha McKernan, (collectively referred to throughout as "Platinum"),<sup>1</sup> by and through their attorneys of record, Stuart C. Morgan and Grady R. Heins of Ledger Square Law, P.S., and hereby respectfully submit these

<sup>1</sup> Platinum's d/b/a is Ace Autobody and Collision which is often referred to in pleadings by Allstate as "Ace."

1 objections to Magistrate Fricke's April 1, 2019 *Order on Plaintiffs' Motion to Compel Postjudgment*  
2 *Discovery and for an Order Authorizing Examination of Tausha McKernan* (hereinafter "Magistrate  
3 Fricke's April 1, 2019 Order") pursuant to Fed. R. Civ. P. 72(a).<sup>2</sup>

4 Platinum further respectfully requests that the District Court modify and/or set aside  
5 Magistrate Fricke's April 1, 2019 Order pursuant to Fed. R. Civ. P. 72(a) as follows:

- 6 1. That the District Court retain jurisdiction of this phase of the case;
- 7 2. That the District Court hold that Platinum may bring a motion for protective order  
8 regarding the subpoena Plaintiffs issued to Platinum for the following reasons:

9 (a) The subpoena is unduly burdensome because it contains no time limitation as  
10 to the scope and expanse of the documents requested, seemingly requiring, for example, every email  
11 and text message ever exchanged between cousins Andrew Jacobs and Tausha McKernan;

12 (b) Although Magistrate Fricke's January 10, 2019 Order authorized Plaintiffs to  
13 conduct third party discovery to Platinum, Plaintiffs' subpoena contained a much larger definition of  
14 the term "YOU" to include not just Platinum, but its employees, attorneys, agents, consultants,  
15 representatives, and "anyone else acting or who has acted for or on its behalf" as those who must  
16 produce documents;

17 (c) The subpoena is over burdensome because it requires hundreds of hours of  
18 work as Platinum would have to first obtain the records and then sift through the same to determine  
19 the following responsive documents. For example, in order to produce all checks which Mr. Jacobs  
20 may have initialed pursuant to limited powers of attorney provided by Platinum's clients to  
21 Platinum, Platinum would need to see every check ever deposited in order to make that  
22 determination. Additionally, Platinum would have to review every financial transaction in its  
23 transaction history in order to determine: (a) the number of transactions over \$500 and; (b) then  
24 determine whether or not the transaction was made to Mr. Jacobs. This is in spite of the fact that  
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26 <sup>2</sup> Dkt. 19.

1 between the time Plaintiffs obtained judgment against Mr. Jacobs and the time of his termination by  
2 Platinum, Plaintiffs *never* issued a writ of garnishment to Platinum for funds owed to Mr. Jacobs;

3 (d) The records demanded would require Platinum to obtain all documents  
4 regarding any phone owned by Platinum, any phone owned by one of its employees, any phoned  
5 owned by any of its attorneys, agents, consultants, representatives, and anyone else acting or who  
6 has acted for or on its behalf and then from those phones retrieve all “monthly statements, call logs  
7 and message logs.” An undertaking like that would require months and months and would obviously  
8 incorporate objections by the individuals noted to the information. Platinum was given less than  
9 10 days by Magistrate Fricke’s April 1, 2019 Order; and

10 (e) The subpoena demands documents that contain sensitive and confidential  
11 information regarding Platinum’s employees and Platinum’s finances. Given that Allstate currently  
12 does business with Platinum by negotiating the costs of repairs of vehicles to be paid by Allstate,  
13 Allstate could use Platinum’s sensitive and confidential financial information to Platinum’s  
14 disadvantage. Said documents could also force Platinum to divulge information about its own  
15 clients and their insurers which Allstate could use to its competitive advantage with no protections  
16 for Platinum or the other insurers.

17 3. That the District Court appoint a Discovery Master at Plaintiffs’ cost to handle the  
18 third party discovery issues. At no time during Mr. Jacobs’ employ did Platinum ever issue a writ of  
19 garnishment to Platinum and the records of Platinum show that only Tausha McKernan has ever  
20 been the only member of Platinum.

21 4. That the District Court enter an order barring the deposition of Tausha McKernan  
22 until such time as Plaintiffs properly issue a subpoena for Ms. McKernan’s deposition that also  
23 gives Ms. McKernan the ability to raise her objections regarding the same. Although authorized by  
24 Magistrate Fricke to issue discovery, Plaintiffs never issued a subpoena for an oral deposition to  
25 Ms. McKernan, depriving the Court of jurisdiction over her. In the alternative, if the Court upholds  
26

1 Magistrate Fricke's April 1, 2019 Order requiring the deposition of Ms. McKernan, that said  
 2 deposition take place at a date and time in May 2019 and in the conference room of counsel for  
 3 Platinum.

4 5. That if the Court does not enter an Order authorizing Platinum to bring a Motion for  
 5 Protective Order regarding Plaintiffs' subpoena, that the Court change Magistrate Fricke's April 1,  
 6 2019 Order to set a new deadline for compliance with the subpoena to a date approximately 90 days  
 7 out from the date of these objections and that the Court set such date as a review date in case  
 8 Platinum is unable to assemble all the documents ordered by the Court in that 90 days.

## 9 II. STATEMENT OF APPLICABLE FACTS

10 Counsel for Platinum appeared in this matter on April 4, 2019.<sup>3</sup>

### 11 A. Platinum Incorporates

12 On approximately March 3, 2016, Platinum filed its Certificate of Formation of Platinum  
 13 Collision Center, LLC d/b/a Ace Autobody & Collision Center.<sup>4</sup> Platinum was formed as a limited  
 14 liability company pursuant to chapter 23.15 RCW which authorizes the formation of limited liability  
 15 companies. Ms. McKernan is the only Member of Platinum.<sup>5</sup> The only way to acquire a limited  
 16 liability company interest is to be admitted as a member of the limited liability company.<sup>6</sup> No one  
 17 other than Ms. McKernan has ever been admitted as a member of Platinum.<sup>7</sup> Platinum has filed all  
 18 appropriate reports with the State of Washington to maintain its status as a limited liability company.

### 19 B. The underlying proceedings

20 Platinum does not dispute that at some point Plaintiffs obtained a judgment against  
 21 Mr. Jacobs. However, on April 3, 2019, Platinum terminated the employment of Mr. Jacobs. *Decl.*  
 22 *of S. Morgan in Support of Platinum's Objections*, **Exhibit A** (counsel's letter countersigned by  
 23 \_\_\_\_\_)

24 <sup>3</sup> Dkt. 20, 22.

<sup>4</sup> Dkt. 11-14.

25 <sup>5</sup> RCW 23.15.006(10) defines the term "member" as, "a person who has been admitted to a limited liability company as a  
 member as provided in RCW 25.15.116 and who has not been disassociated from the limited liability company.

<sup>6</sup> RCW 25.15.116(1).

26 <sup>7</sup> Dkt. 15.

1 Mr. Jacobs). At no time between the entry of Plaintiffs' judgment against Mr. Jacobs and  
 2 Mr. Jacobs' termination on April 3, 2019, did Plaintiffs ever issue a writ of garnishment to Platinum  
 3 seeking to collect on its judgment against Mr. Jacobs. No court ever issued a temporary restraining  
 4 order or preliminary or permanent injunction against Platinum from compensating Mr. Jacobs for  
 5 services rendered to Platinum by him. In March 2019, Ms. McKernan, the admitted sole member of  
 6 Platinum filed a Declaration with the Court stating, in relevant part, "[i]f Allstate Insurance would  
 7 like to garnish his [Mr. Jacobs'] pay, then I would accept garnishment paperwork as well."<sup>8</sup> Even  
 8 after blatantly offering Allstate the suggestion of a writ of garnishment, Allstate did nothing to  
 9 pursue the same.

10 Instead, Allstate, a sophisticated litigant, armed with unlimited resources to pursue  
 11 Mr. Jacobs proceeded on a theory unsupported by any case law or statute that Mr. Jacobs is the  
 12 owner of Platinum. Plaintiffs then embarked on a mission to force evidence to support its theories;  
 13 theories that are unsupported by any citation to court rule, statute, or case law.

14 **C. Without notice to Platinum, Plaintiffs obtained an Order authorizing them to issue a**  
 15 **subpoena and forcing Platinum to answer the subpoena. Said Order was ultimately**  
 16 **vacated by the District Court.**

17 In October 29, 2018, Plaintiffs filed their Motion for FRCP 69 Postjudgment Discovery.<sup>9</sup> It  
 18 was noted for hearing the same day it was filed and sought authorization for Plaintiffs to issue a  
 19 subpoena for documents to Platinum and an order requiring Platinum to provide documents  
 20 responsive to that subpoena.<sup>10</sup> Plaintiffs' counsel submitted an October 19, 2018 declaration  
 21 wherein he testified, under penalty of perjury, that Mr. Jacobs "is *believed to . . . own, operate,*  
 22 *control . . . Platinum Collision Center [.]*"<sup>11</sup> No facts or documents set forth in the Declaration

24 <sup>8</sup> Dkt. 15.

25 <sup>9</sup> Dkt. 1.

26 <sup>10</sup> *Id.*

<sup>11</sup> Dkt. 2.



1 supporting that testimony. No testimony was set forth as to who believed Mr. Jacobs owned or  
 2 controlled Platinum or why said person believed that.<sup>12</sup>

3 Plaintiffs' counsel has further testified in this matter that prior to "preparing to issue the  
 4 judgment debtor discovery in this matter, my office has performed a number of investigatory  
 5 functions related to Mr. Jacobs, Ms. McKernan and Ace Autobody."<sup>13</sup>

6 However, as part of its motion practice, Plaintiffs did not disclose to the Court that the  
 7 Secretary of State of Washington's website shows that Platinum is a single member LLC and that  
 8 Mr. Jacobs is not listed as a member of the LLC or a governor of the LLC in any fashion.

9 On November 5, 2018, the Court entered an Order on Plaintiffs' Motion. As applied to  
 10 Platinum, the Order provided, "Platinum Collision Center, LLC d/b/a Ace Auto Body Collision, will  
 11 provide documents in response to the Subpoena to Produce Documents described in Exhibit E to the  
 12 Declaration of Mark Melter within 21 days of service."<sup>14</sup> The no-notice motion and Order  
 13 eliminated any opportunity for Platinum to preserve any of its objections or rights against the  
 14 subpoena.

15 The Court file then indicates that, regardless, Platinum made attempts to exercise objections  
 16 to the subpoena on or about December 31, 2018.<sup>15</sup>

17 On January 7, 2019, unbeknownst to Platinum, the District Court entered an Order in Case  
 18 No. 18-5022 which vacated Magistrate Fricke's November 5, 2018 Order.<sup>16</sup> The District Court's  
 19 January 7, 2019 Order also held that "any order Judge Fricke enters on it will be subject to review  
 20 under Fed. R. Civ. P. 72."<sup>17</sup>

21  
 22  
 23 <sup>12</sup> Whether or not Mr. Jacobs "operated" Platinum is irrelevant. The undisputed facts show that Mr. Jacobs was  
 24 employed by Platinum as an independent contractor and has been terminated. Plaintiffs never defined what they meant  
 25 by "operated" or "controlled."

26 <sup>13</sup> Dkt. 11.

<sup>14</sup> Dkt. 3.

<sup>15</sup> Dkt. 11-5 (see language set forth in subpoena regarding Fed. R. Civ. P. 45(d)(2)(B)).

<sup>16</sup> Dkt. 4.

<sup>17</sup> *Id.* (emphasis added).

Three days later though, on January 10, 2019, again with no notice to Platinum, Magistrate Fricke entered another Order.<sup>18</sup>

Magistrate Fricke's January 10, 2019 Order stated in paragraph 1, "The discovery contemplated by FRCP 69(a) is a distinct phase of litigation, *focused narrowly* on enforcing the judgment by supplemental proceedings."<sup>19</sup> As it related to Platinum, Magistrate Fricke's order holds, "The Court grants plaintiffs' motion to conduct third party discovery concerning PLATINUM COLLISION CENTER, LLC, and d/b/a ACE AUTOBODY & COLLISION."<sup>20</sup> However, Magistrate Fricke's Order states nothing about authorizing the subpoena that Plaintiffs asked for permission to issue and it states nothing about automatically requiring Platinum to provide documents in response to that subpoena. Magistrate Fricke's January 10, 2019 Order refers to an "exception" to the concept that "generally, a judgment creditor is allowed to inquire about the third party's knowledge concerning assets of the judgment debtor – but is not allowed to inquiry into the finances of the third party."<sup>21</sup> However, Magistrate Fricke's January 10, 2019 Order does not state or otherwise hold that said exception actually applies to the third party discovery sought by Plaintiffs from Platinum. There is nothing about Plaintiffs' subpoena that is "focused narrowly on enforcing the judgment by supplemental proceedings."

Paragraph Four (4) of Magistrate Fricke's January 10, 2019 Order states, in relevant part, "[t]he parties shall follow the Federal Rules of Civil Procedure and the Western District of Washington Local Civil Rules regarding discovery, motion practice and other aspects of this matter."<sup>22</sup> The Court's file does not reflect that Plaintiffs ever issued a subpoena for an oral deposition to Platinum or Ms. McKernan.

<sup>18</sup> Dkt. 5.

<sup>19</sup> Dkt. 5 (citing *Danning v. Lavine*, 572 F.2d 1386, 1390-91 (9<sup>th</sup> Cir. 1978) (emphasis added)).

<sup>20</sup> Dkt. 5.

<sup>21</sup> Dkt. 5.

<sup>22</sup> Dkt. 5.

1           Apparently, on Tuesday, February 20, 2019, counsel for Plaintiffs and previous counsel for  
 2   Platinum (Mr. Kessling) had a discussion about Plaintiffs' subpoena.<sup>23</sup> On Thursday February 21,  
 3   2019, counsel for Plaintiffs wrote an email to previous counsel for Platinum addressing their  
 4   conversation.<sup>24</sup> The February 21, 2019 email from counsel for Plaintiffs mentions nothing about an  
 5   oral deposition of Ms. McKernan.

6           The Court file does not reflect any sort of response from Mr. Kessling confirming that  
 7   counsel for Plaintiffs' recitation of the conversation was correct. However, on February 22, 2019,  
 8   Mr. Kessling wrote to counsel for Plaintiffs providing Platinum's renewed objections to Plaintiffs'  
 9   subpoena, providing a pleading entitled Answer to Subpoena for Documents to Platinum Collision  
 10   Center, LLC dba Ace Autobody & Collision which contained further objections and citations to  
 11   authority for the same. Mr. Kessling further advised that he no longer represented Platinum as of  
 12   February 22, 2019.<sup>25</sup>

13           Platinum further identified a speaking agent for the corporation as to the items requested in  
 14   the subpoena.<sup>26</sup> Platinum's written responses to the subpoena requests and the documents produced  
 15   therewith show as follows:

- 16           1.     Andrew Jacobs has never been a member of Platinum;
- 17           2.     Platinum is a single member LLC with Ms. McKernan as the only member; and
- 18           3.     There are no silent owners or partners in Platinum.
- 19           4.     There are no documents related to any joint ventures, partnerships, corporations,
- 20   limited liability partnerships, or any other business entity other than a limited liability company.
- 21           5.     Platinum had not yet filed any corporate tax returns.
- 22           6.     Andrew Jacobs is not a signor on Platinum's bank account with Heritage Bank.
- 23           7.     Andrew Jacobs was issued a form 1099-MISC for 2018.

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24           <sup>23</sup> Dkt. 11-11.

25           <sup>24</sup> *Id.*

26           <sup>25</sup> Dkt. 11.14.

<sup>26</sup> *Id.*



1 On March 14, 2019, Plaintiffs filed a Motion to Compel Platinum to provide documents in  
 2 response to the subpoena Plaintiffs issued and to “request an order authorizing an examination of  
 3 Tausha McKernan, the sole member/owner of Ace Autobody.”<sup>27</sup> Plaintiffs’ Motion states that  
 4 Plaintiffs’ counsel conferred with Platinum pursuant to Civil Rule 26 in an effort to resolve  
 5 discovery disputes, but nothing in the record indicates that there was ever a discussion regarding  
 6 Ms. McKernan’s oral deposition or an oral deposition of a representative of Platinum.

7 With respect to the deposition of Ms. McKernan, Plaintiffs Motion to Compel framed the  
 8 issue: “Should the Court issue an Order compelling Ms. McKernan to appear for an examination so  
 9 that Plaintiffs can investigate her business relationship with Mr. Jacobs under oath?”<sup>28</sup> As it applied  
 10 to the oral deposition of Ms. McKernan, Plaintiffs further argued, “the Court should also enter an  
 11 Order requiring Ms. McKernan to appear for an examination before this Court. Such an examination  
 12 would be authorized under Rules 69 and 45.”<sup>29</sup> While Plaintiffs had obtained an Order authorizing  
 13 third party discovery under the Federal Rules pursuant to Rule 69, Plaintiffs had never issued a  
 14 subpoena to Ms. McKernan pursuant to Rule 45 for an oral deposition. This deprived  
 15 Ms. McKernan of the ability to have the required time to object to such a subpoena and/or bring a  
 16 motion for protective order regarding the same.

17 Plaintiffs were aware that Platinum had no lawyer and Plaintiffs’ Motion to Compel was  
 18 noted for hearing on March 29, 2019.<sup>30</sup>

19 Plaintiffs’ Motion to Compel went on to argue that Plaintiffs have “put substantial evidence  
 20 before the Court that raises a reasonable doubt as to the bonafides of Mr. Jacobs’ relationship with  
 21 Ace Autobody. In fact, Plaintiffs have created a reasonable doubt that Ms. McKernan’s purported  
 22 ownership of Ace Autobody is merely a front for Mr. Jacobs, the real owner.”<sup>31</sup> Plaintiffs further  
 23

24 <sup>27</sup> Dkt. 10.

25 <sup>28</sup> Dkt. 10 (emphasis added).

26 <sup>29</sup> Dkt. 10 (emphasis added).

<sup>30</sup> Dkt. 10.

<sup>31</sup> Dkt. 10.

1 argued that there is a “reasonable suspicion that there is an improper relationship between  
2 Mr. Jacobs and Ace Autobody.”

3 On March 27, 2019, Ms. McKernan filed a pro se Declaration in Reply to Plaintiffs’ Motion  
4 to Compel attempting to state her position regarding the Motion to Compel. She is obviously not an  
5 attorney, but her Declaration did state, in relevant part:

6 1. She is the sole member of Platinum.

7 2. Her cousin Mr. Jacobs was employed as a marketing and sales manager.

8 3. She does not understand why she needs to provide trade secret information or  
9 personal, private, and confidential information to Allstate, including personal information about her  
10 employees, family relationships, and communications with her family.

11 4. She provided a letter from Platinum’s banker stating that she is the sole signatory on  
12 Platinum’s bank account.

13 5. If Plaintiffs desired to garnish Mr. Jacobs’ wages, she would “accept garnishment  
14 paperwork as well.”

15 6. She thought she would be unable to produce all the information that Allstate is asking  
16 for.

17 7. That she be allowed to appoint a speaking agent, Mr. Saghdejian, for Platinum.

18 One of the issues focused on by Plaintiffs’ in the Motion to Compel and in the Declaration in  
19 Support of the Motion to Compel, was Plaintiffs claim that “[p]laintiffs should be entitled to  
20 discover any powers of attorney to determine if Mr. Jacobs is silently controlling the assets of  
21 undisclosed business entities (which he appears to be doing).”<sup>32</sup> This assertion was formed based on  
22 Allstate’s submission of redacted copies of three checks issued by Allstate to Platinum and other  
23 second parties whom Allstate redacted from the copies of the checks submitted. Had Allstate not  
24 redacted the other payees on the checks, Platinum would have had the ability to demonstrate to the  
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26 <sup>32</sup>Dkt 10.

1 Court that this is an absolutely false assertion by Allstate. Allstate used the redacted payees to create  
 2 the illusion that the same were “undisclosed business entities.” Allstate’s allegations could not be  
 3 further from the truth.

4 Upon review of the redacted checks and the “poa” designation on the back of the redacted  
 5 checks, new counsel for Platinum quickly surmised that the situation was nothing like what Allstate  
 6 was portraying. New counsel for Platinum quickly determined that Platinum operates like many  
 7 other collision repair facilities that are paid by insurance companies. When the customer comes in,  
 8 they sign a work order with Platinum that allows Platinum to deposit payment from the insurance  
 9 company if the insurance company makes the check out to both Platinum and the customer (which  
 10 insurers often do). Had Allstate disclosed the names redacted on the checks, Platinum could have  
 11 easily matched the check to a customer name and pointed searched for the limited power of attorney  
 12 signed by Platinum’s customer authorizing the same. Counsel for Platinum pointed this out to  
 13 counsel for Allstate in written correspondence. *Morgan Declaration, Exhibit B.* Additionally,  
 14 Platinum has recovered what it believes to be associated limited powers of attorney from its  
 15 customers for two out of the three redacted checks submitted by Allstate in support of the Motion to  
 16 Compel. *Morgan Declaration, Exhibit C.* The “power of attorney” is not some power of attorney  
 17 issued by Platinum to Mr. Jacobs to “silently control” Platinum and Allstate’s redaction of the  
 18 checks was done for no purpose other than to create the illusion of these “undisclosed business  
 19 entities” to fool the Court.<sup>33</sup>

20 Plaintiffs argued that the “poa” on the reverse of their redacted checks “indicates that Ace  
 21 Autobody’s statement that there are now power of attorney documents is false and that Mr. Jacobs is  
 22 exercising such power. And it indicates that Ace Autobody may have more than one bank or  
 23

24  
 25 <sup>33</sup> There is no other explanation for the use of the redaction in conjunction with the reference to “undisclosed business  
 26 entities.” The only other possible explanation is that Allstate believes the identities of the second payees on the checks is  
 sensitive information which should not be disclosed to the court or to Platinum. If that is the case, then it supports  
 Platinum’s theory of the confidential nature of the information now sought by Plaintiffs.

1 financial account to deposit company revenues, funds and assets.”<sup>34</sup> There is nothing indicating that  
 2 Platinum has more than one bank account and, even if it does, doing so is not a crime nor does it  
 3 lead to the conclusion that Mr. Jacobs somehow is a member of Platinum.

4 Another basis for Plaintiffs’ Motion to Compel was its assertions regarding the address of  
 5 Ms. McKernan listed on Platinum’s filings with the Secretary of State.<sup>35</sup> As it turns out, the address  
 6 listed is a typographical error. The address listed on the documents is 5707 63<sup>rd</sup> Avenue West,  
 7 University Place, Washington. Plaintiffs are correct – that is an incorrect address. Ms. McKernan  
 8 actually resided at 5704 63<sup>rd</sup> Avenue West, University Place, Washington. There is nothing  
 9 nefarious about typos.

10 On April 1, 2019, the Court entered an Order on Plaintiffs’ Motion to Compel.<sup>36</sup> With  
 11 respect to Platinum, the Court’s order stated, in relevant part, that “Ms. McKernan’s responses to  
 12 plaintiffs’ motion to compel do not identify any grounds for failing to comply with the relevant and  
 13 reasonable discovery requests . . . and the subpoena to Ms. McKernan.”<sup>37</sup> That was incorrect.  
 14 Ms. McKernan’s objections to the subpoena requests were decently stated in the answers provided  
 15 by Mr. Kessling. It appears that Magistrate Fricke was only focused on Ms. McKernan’s pro se  
 16 declaration.

17 Magistrate Fricke further held, “Plaintiffs have presented evidence sufficient ‘to raise a  
 18 reasonable doubt about the bona fides of [any] transfer of assets between’ Mr. Jacobs and  
 19 Ms. McKernan.”<sup>38</sup> The Court’s order required Platinum to provide responses to Plaintiffs’ document  
 20 subpoena by April 10, 2019, and further required Ms. McKernan to appear for an examination on  
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22 <sup>34</sup> Dkt. 10.

23 <sup>35</sup> Dkt 10 at page 14.

24 <sup>36</sup> Dkt. 19.

25 <sup>37</sup> *Id.* Notably, the only grant of authority by Magistrate Fricke was to allow Plaintiffs to conduct third party discovery to  
 26 Platinum. There was no grant of authority to allow third party discovery directly to Ms. McKernan. However, instead of  
 directing its subpoena to Platinum only, Plaintiffs overreached and included a very broad definition of the term “YOU”  
 in the subpoena which included not just Platinum, but all of Platinum’s employees, attorneys, agents, consultants,  
 representatives, and anyone else acting or who has acted for or on its behalf.

<sup>38</sup> *Id.* (citing *Credit Lyonnais, S.A. v. SGC Int’l, Inc.*, 160 F.3d 428, 431 (8<sup>th</sup> Cir. 1998)).

1 April 17, 2019.<sup>39</sup> There is no indication in the Court's file as to whether Platinum or Ms. McKernan  
 2 was ever served with the April 1, 2019 Order or the method of service. Platinum disagrees that  
 3 Plaintiffs presented any such evidence when, in the very short time that counsel for Platinum has  
 4 been on board, Platinum has devastated the main theory of Plaintiffs. Platinum anticipates that given  
 5 a reasonable amount of time to put the remainder of Allstate's theories to appropriate testing, they  
 6 too will be debunked.

7 Platinum makes its objections to Magistrate Fricke's April 1, 2019 Order above and requests  
 8 that the District Court consider those objections and modify the April 1, 2019 Order and set it aside  
 9 as set forth on pages 1-2 of these objections.

### 10 **III. EVIDENCE RELIED UPON**

11 Platinum relies on the records and files herein and the Declaration of Stuart C. Morgan in  
 12 support of this Motion and the exhibits attached thereto.

### 13 **IV. ADDITIONAL ARGUMENT**

14 The district court judge who assigned the case retains ultimate authority over the case and  
 15 shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or  
 16 contrary to law.<sup>40</sup> Even if no objections are filed, the District Court has the authority to rehear or  
 17 reconsider the matter *sua sponte*.<sup>41</sup> If the District Court is not inclined to grant Platinum's objections  
 18 herein, Platinum should be at least afforded the opportunity now that it is not acting pro se to have a  
 19 full hearing on the merits of Plaintiffs' Motion to Compel so as much evidence as possible may be  
 20 heard by the Court.

21 Allstate never issued a writ of garnishment, a writ of attachment, or a writ of execution to  
 22 Platinum to enforce its judgment against Mr. Jacobs. Platinum terminated Mr. Jacobs on April 3,  
 23 2019. Platinum no longer employs Mr. Jacobs (yet the business still manages to operate). Platinum  
 24

25 <sup>39</sup> *Id.*

26 <sup>40</sup> *Moore v. Ford Motor Co.*, 755 F.3d 802 (5<sup>th</sup> Cir. 2014).

<sup>41</sup> *Baker-Mckee Janssen Corr*, *Federal Civil Rules Handbook* at 1330 (2017).



1 does not have any property of Mr. Jacobs in its possession. Platinum is not indebted to nor would it  
 2 become indebted to Mr. Jacobs at any time.

3 Plaintiffs' main theory that Mr. Jacobs is a "silent owner" is belied by the corporate  
 4 documents which name only Ms. McKernan as the sole member. There is nothing nefarious about  
 5 Ms. McKernan employing other individuals to conduct the day-to-day operations of the company.  
 6 Ms. McKernan stated in her Declaration she was willing to accept garnishment paperwork regarding  
 7 Mr. Jacobs. Plaintiffs never issued a writ of garnishment yet Plaintiffs want Platinum to turn over  
 8 every single financial document about the company to them. Plaintiffs' theory that Mr. Jacobs  
 9 operates the company pursuant to a power of attorney has been completely wiped out in spite of  
 10 Plaintiffs' attempts to hide behind a redaction of checks.

11 Although Plaintiffs had the ability to do so, Plaintiffs never issued a subpoena to  
 12 Ms. McKernan for an oral deposition. The Court never acquired jurisdiction over her to force her to  
 13 be deposed and she never had the ability to object to such a subpoena or seek a protective order  
 14 regarding the same.

15 Platinum does not dispute that Plaintiffs have a judgment against Mr. Jacobs. However,  
 16 Platinum also has the right to continue to operate its business without the entirety of its existence  
 17 being soaked up by the wild-west and factually unsupported discovery tactics of Plaintiffs.

18 DATED this 10th day of April 2019.

19 LEDGER SQUARE LAW, P.S.

20 By: s/ Stuart C. Morgan

21 Stuart C. Morgan, WSBA # 26368

22 Grady R. Heins, WSBA # 54262

23 Ledger Square Law, P.S.

24 710 Market St.

25 Tacoma, WA 98402

26 Phone: (253) 327-1900

Facsimile: (253) 327-1700

Email: [stu@ledgersquarelaw.com](mailto:stu@ledgersquarelaw.com)

[grady@ledgersquarelaw.com](mailto:grady@ledgersquarelaw.com)

Attorneys for Platinum Collision Center LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

Mark B. Melter Fain Anderson Vanderhoef Rosendahl 701 Fifth Ave., Suite 4750 Seattle, WA 98104-7089	<input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile
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DATED this 10th day of April 2019 at Tacoma, Washington.

s/ Amy Jean Shackelford, PP, PLS  
 Legal Assistant to Stuart C. Morgan and  
 Grady R. Heins  
 Ledger Square Law, P.S.  
 710 Market St.  
 Tacoma, WA 98402  
 Phone: (253) 327-1900  
 Facsimile: (253) 327-1700